

## MEETING RECORD

**NAME OF GROUP:** PLANNING COMMISSION

**DATE, TIME AND PLACE OF MEETING:** Wednesday, January 5, 2005, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

**MEMBERS IN ATTENDANCE:** Jon Carlson, Gerry Krieser, Dan Marvin, Mary Bills-Strand, Lynn Sunderman and Tommy Taylor (Gene Carroll, Roger Larson and Melinda Pearson absent); Marvin Krout, Ray Hill, Mike DeKalb, Brian Will, Becky Horner, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

**STATED PURPOSE OF MEETING:** Regular Planning Commission Meeting

Chair Mary Bills-Strand called the meeting to order and requested a motion approving the minutes for the regular meeting held December 8, 2004. Motion for approval made by Sunderman, seconded by Carlson and carried 5-0: Carlson, Krieser, Marvin, Bills-Strand and Sunderman voting 'yes' (Carroll, Larson, Pearson and Taylor absent).

### **CONSENT AGENDA**

#### **PUBLIC HEARING & ADMINISTRATIVE ACTION**

#### **BEFORE PLANNING COMMISSION:**

January 5, 2005

Members present: Carlson, Krieser, Marvin, Bills-Strand and Sunderman; (Carroll, Larson, Pearson and Taylor absent).

The Consent Agenda consisted of the following items: **COUNTY SPECIAL PERMIT NO. 04066, WEST YANKEE HILL ACRES COMMUNITY UNIT PLAN; COUNTY PRELIMINARY PLAT NO. 04029, WEST YANKEE HILL ACRES; and COUNTY FINAL PLAT NO. 04134, MASEK'S 1<sup>ST</sup> ADDITION.**

Sunderman moved to approve the Consent Agenda, seconded by Marvin and carried 5-0: Carlson, Krieser, Marvin, Bills-Strand and Sunderman voting 'yes' (Carroll, Larson, Pearson and Taylor absent).

**USE PERMIT NO. 132A**  
**TO REMOVE THE RESTRICTION**  
**UPON HOURS OF OPERATION**  
**AT S. 70<sup>TH</sup> STREET AND HIGHWAY 2.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

January 5, 2005

Members present: Marvin, Krieser, Sunderman, Taylor, Carlson and Bills-Strand; Carroll, Larson and Pearson absent.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

Proponents

**1. Peter Katt** appeared on behalf of the applicant, **Livingston Investments**. This is an application to amend Use Permit No. 132 on a project on Highway 2 that includes the Home Depot site. Katt submitted photographs and explained that the applicant is seeking to amend a provision that restricts the hours of operation of all uses on all areas in the shopping center to not operate from midnight to 5:00 a.m. It was a requirement put into the use permit at the end because there were concerns of the neighbors that there might be some uses that would operate 24 hours and create problems for the neighbors. It was agreed that when and if a 24-hour operation came forward, there would be a requirement that it come forward for review of the specific use and location.

The proposed user is an IHOP, 24-hour restaurant business. Katt demonstrated on the map the location of the IHOP and the views from the proposed site. The building would primarily be visible from the Home Depot shopping center. The neighbor immediately to the south, First Choice Credit Union, is in support of another business in their neighborhood. Katt agreed with all conditions of approval set forth in the staff report.

Carlson inquired whether there would be any additional signage to make a more physical statement. Katt was not familiar with the sign requirements of this specific use permit, but the applicant is not proposing any amendments to the sign package approved as a part of the original use permit. The only sign they would be entitled to is the monument sign at the corner of the intersection, which is stone and the same color as the Home Depot sign, listing the individual users. There may be some permitted signage on the building, but none off-site. There will not be a large pole sign.

Opposition

1. **Steve Nickel**, 7941 Portsche Lane, President of the **Family Acres Neighborhood Assn.**, testified in opposition. He suggested that retail development was placed on this site because of its proximity to Hwy 2, but because it penetrates on two sides into existing residential neighborhoods, the restriction was placed on operating hours. No buffer or transition was provided between the retail area and the residential area, and the restriction on operating hours was to be in lieu of buffer or transition. The residences are still in place. There is no buffer. There is no transition. Therefore, he believes there is no justification for removal of the operating hours restriction.

Taylor wondered whether a buffer and transition being in place would remove the neighborhood's problem with the extended hours. Nickel stated that if it adequately protected the residences, they would agree.

Staff questions

Carlson inquired as to the signage that is allowed in this use permit. Brian Will of Planning staff stated that there were no exceptions to the sign ordinance granted with this use permit; those signs allowed by the B-2 district would apply. Carlson thought they were further restrictions with the use permit. He referred to the pole sign at 27<sup>th</sup> & Superior Street. Will believes that a pole sign for the center would be allowed, but not for this individual building. He agreed with the applicant's testimony.

Response by the Applicant

Katt believes that the 27<sup>th</sup> & Superior site with a pole sign is zoned B-5 (as opposed to B-2). There is not a pole sign permitted here and there are no plans to have one. It is not permitted today. Unless there are some changes, a pole sign would not be allowed without further review and public hearing.

With regard to the opposition by Family Acres, Katt agreed that buffering to the neighborhood is an important consideration and criteria, which he believes has been demonstrated by the photographs. The applicant is unaware of anything else that could be done that may buffer it further. It appears that with this particular Lot 1 being cut down at least 10-15 feet, the greater impact on the neighborhood is from the existing city road improvements rather than any impact of the proposed use on Lot 1. Katt showed the distances from the residences on the map.

Carlson inquired whether the applicant is proposing a median cut. Katt pointed to the map and showed that the main entrance is further down on 70<sup>th</sup> Street.

**ACTION BY PLANNING COMMISSION:**

January 5, 2005

Taylor moved to approve the staff recommendation of conditional approval, seconded by Marvin.

Marvin commented that he has been to the Home Depot and believes there is a significant drop-off from that hill. He does not believe an IHOP, as opposed to an on-sale restaurant, will be as intrusive as one might think.

Carlson pointed out that the only restriction being waived is the operating hours between midnight and 5:00 a.m., so the building can be there at any time, but the question is whether it becomes more intrusive between midnight and 5:00 a.m.

Motion for conditional approval carried 6-0: Marvin, Krieser, Sunderman, Taylor, Carlson and Bills-Strand voting 'yes'; Carroll, Larson and Pearson absent. This is a recommendation to the City Council.

**USE PERMIT NO. 04006**

**ON PROPERTY GENERALLY LOCATED**

**AT N.W. 1<sup>ST</sup> STREET AND W. HIGHLAND BLVD.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

January 5, 2005

Members present: Marvin, Krieser, Sunderman, Taylor, Carlson and Bills-Strand; Carroll, Larson and Pearson absent.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

**Proponents**

**1. Brian Carstens** appeared on behalf of **Southview, Inc. and Highlands East Limited Partnership**, and presented the use permit for 18 attached single-family units and two small office buildings, one being medical and the other a possible bank with drive-thru. This development is an extension of previously approved Barons Ridge which contains two small office buildings and 36 attached units.

With regard to the Public Works and Utilities requirements under Condition #1.1.4, Carstens stated that the applicant has no problem deleting the driveway out on N.W. 1<sup>st</sup> Street; however, the owners would prefer to keep the access point at Pemberly Lane and W. Highlands Boulevard because it is good access for people that live at the southern end of the project. As part of this project, the applicant is constructing a left turn lane at N.W. 1<sup>st</sup> at the developer's

expense. There will be better circulation for the entire development with the access point at Pemberly Lane. Carstens did suggest, however, that the requirement for a right-turn lane is a little excessive because they just have the two small office buildings and two residential units at that location.

Carlson inquired about the pedestrian access for the residents to go to the bank. He only sees a sidewalk generally on the south. Carstens advised that there is another sidewalk at the northern development that weaves between the units and comes between the two north buildings. One will be able to walk between all of the buildings.

The applicant is requesting to keep the access at Pemberly Lane, but does not believe the right turn lane is necessary.

### Opposition

**1. Jason Smith**, who resides at 5030 N.W. 2<sup>nd</sup>, is one of the neighbors in the adjoining neighborhood. His home backs up to the northern section of this development. He is not so much in opposition; however, he believes allowing access on Pemberly Lane is a great idea, and he also believes that the additional right turn lane would also be a good idea to avoid accidents. Other than that, he is in support.

### Staff questions

Carlson asked for Public Works to speak to the right turn lane issue. Dennis Bartels of Public Works advised that the lot as platted today had relinquished access to Highland Boulevard. He is recommending that if this development is allowed to take access to Highlands Boulevard, that they build a right turn lane in front of that driveway because of the proximity to N.W. 2<sup>nd</sup>. It would be a right turn in and out driveway at that location because of the median. If the cut was to be allowed, they should be willing to build a right turn lane in turn for getting that access.

### Response by the Applicant

Carstens does not believe that Highlands Boulevard is that major of a street in the mornings as people are leaving the Highlands as opposed to coming home. However, the applicant will accept the right turn lane if the access is allowed. They could do a traffic analysis of that intersection and they would be willing to make an adjustment.

### **ACTION BY PLANNING COMMISSION:**

January 5, 2005

Taylor moved to approve the staff recommendation of conditional approval, seconded by Carlson.

Carlson moved to amend to add language to Condition #1.1.4 to allow the access at Pemberly Lane with the requirement to construct a right turn lane at the owner's expense, seconded by Bills-Strand and carried 6-0: Marvin, Krieser, Sunderman, Taylor, Carlson and Bills-Strand voting 'yes'; Carroll, Larson and Pearson absent.

Main motion, as amended, carried 6-0: Marvin, Krieser, Sunderman, Taylor, Carlson and Bills-Strand voting 'yes'; Carroll, Larson and Pearson absent. This is a recommendation to the City Council.

**ANNEXATION NO. 04011**

**and**

**CHANGE OF ZONE NO. 04075,**  
**VILLAGE GARDENS PLANNED UNIT DEVELOPMENT,**  
**ON PROPERTY GENERALLY LOCATED**  
**EAST OF S. 56<sup>TH</sup> STREET AND SOUTH OF**  
**PINE LAKE ROAD.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

January 5, 2005

Members present: Marvin, Krieser, Sunderman, Taylor, Carlson and Bills-Strand; Carroll, Larson and Pearson absent.

Staff recommendation: Approval of the annexation, subject to an annexation agreement; and conditional approval of the PUD.

Ex Parte Communications: None.

Becky Horner of Planning staff submitted revised conditions of approval.

Proponents

**1. Dick Campbell**, 6201 Pine Lake Road, presented the proposal. The Campbell family and business has been in this community for over 90 years and has been located in many different areas of the community. The Campbell nursery production facility at 56<sup>th</sup> & Pine Lake Road is surrounded by the city on two of three sides and closely on the fourth side. The developer entered into a charrette in January of 2001, to bring as many parties as possible together that could be affected to discuss this intense design project, including the surrounding neighbors and governmental departments. An open house was held every evening of the charrette to allow input. City staff was very helpful and a plan was crafted that the developer believes made a great deal of sense and they laid out a street network. They also took into consideration the timing of this development with the anticipated city improvements. This last June, they held a second charrette and included more city departments and revisited the original plan done in 2001, to check and make sure that it was still the correct plan and then

brought forward refinements to the plan and tested it to make sure that they were addressing the issues that needed to be addressed. Another open house was held in September, 2004. There was great participation in the open houses.

Campbell then proceeded to describe the concept of the plan being the “traditional neighborhood development” (TND). The main thing about it is that it has quality architecture with emphasis on beauty and aesthetics and most importantly on human comfort and sense of space. There is great deal of attention to interconnections, the walkability, alleys with garages, and presents the home rather than presenting the garage. It brings the home closer to the sidewalk and creates natural human interaction, and moves some of the activities we have moved to our back yard to a total yard environment.

There will be a great diversity of housing types. It includes all kinds of architectural styles, all kinds of price ranges, and all kinds of different availability for different age needs. If done correctly, someone could move into this neighborhood and move through all of the changes in their life in different housing opportunities without ever leaving the neighborhood.

The developer recognizes that this property has many important things that should be maintained, including a tremendous amount of amenities, including mature trees which will be maintained; it has been the nursery site and the garden center will remain as a part of the urban village. The grading on this site will only be done where absolutely necessary. The intent is to replicate many of the great neighborhoods that have been accomplished in this community over time which work with the natural terrain.

Campbell showed slides for orientation to the site. The master plan encompasses 240 acres. LPS had purchased a future elementary site along Yankee Hill Road. The developer has worked with LPS and they have agreed to move their site to be more internal to the site so that it becomes more walkable. From Pine Lake Road they are proposing a boulevard which will come clear down through the mile section, called Blanchard Boulevard, being the epitome of a Sheridan Boulevard, with the only difference being a 24' wide median. The important thing is the interconnection of the streets. The sidewalks will be 5 feet wide to create some interaction and connectivity.

Campbell explained that the total development will be done in three phases – today is the original 80 acres purchased by his parents in 1960. He showed the layout of the first phase and the street network. As things would evolve, the area around the garden center would develop into the urban village and the residential moves to the east and south from there.

The developer is in the process of working with Public Works on some green infrastructure practices. There are going to be many very creative partnerships with many of the city departments, including Parks.

Campbell stated that this development complies with the tenets of new urbanism, including a development that is walkable from end to end; there is a civic core and a mix of uses and amenities; there is an interconnected street network; there are recognizable boundaries; the plan provides for chance meetings and privacy with a variety of housing types.

Two architectural firms have been selected, Studio NRG and BBH. They have also selected 15 qualified builders as part of the development team. This is a joint venture with many local companies.

Campbell then recited the Village Gardens Mission Statement.

**2. DaNay Kalkowski** complimented and thanked the city staff for their help, cooperation and willingness to work through the many details. This is the first PUD to come forward under the new PUD ordinance. It has been a great vehicle for this project and necessary to bring a project with some flexibility. The developer/applicant agreed with the staff conditions of approval, as amended by staff today.

There was no testimony in opposition.

**ANNEXATION NO. 04011**

**ACTION BY PLANNING COMMISSION:**

January 5, 2005

Marvin moved to approve the staff recommendation of approval, subject to an annexation agreement, seconded by Sunderman and carried 6-0: Marvin, Krieser, Sunderman, Taylor, Carlson and Bills-Strand voting 'yes'; Carroll, Larson and Pearson absent. This is a recommendation to the City Council.

**CHANGE OF ZONE NO. 04075**

**ACTION BY PLANNING COMMISSION:**

January 5, 2005

Carlson moved to approve the staff recommendation of conditional approval, as revised, seconded by Sunderman and carried 6-0: Marvin, Krieser, Sunderman, Taylor, Carlson and Bills-Strand voting 'yes'; Carroll, Larson and Pearson absent. This is a recommendation to the City Council.

**CHANGE OF ZONE NO. 04034**  
**FROM AGR AGRICULTURAL RESIDENTIAL**  
**TO R-3 RESIDENTIAL,**  
**ON PROPERTY GENERALLY LOCATED**  
**AT S. 66<sup>TH</sup> STREET AND HIGHWAY 2.**

**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:** January 5, 2005

Members present: Marvin, Krieser, Sunderman, Taylor, Carlson and Bills-Strand; Carroll, Larson and Pearson absent.

Staff recommendation: Approval.

Ex Parte Communications: None.

The Clerk announced that the applicant has submitted a request for an additional continuance until the February 2, 2005, Planning Commission meeting.

Marvin moved to defer, with continued public hearing and action scheduled for February 2, 2005, seconded by Taylor and carried 6-0: Marvin, Krieser, Sunderman, Taylor, Carlson and Bills-Strand voting 'yes'; Carroll, Larson and Pearson absent.

**SPECIAL PERMIT NO. 04065**  
**FOR ON-SALE ALCOHOL ON PROPERTY**  
**LOCATED AT 4680 LEIGHTON AVENUE.**

**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:** January 5, 2005

Members present: Marvin, Krieser, Sunderman, Taylor, Carlson and Bills-Strand; Carroll, Larson and Pearson absent.

Staff recommendation: Denial.

Ex Parte Communications: None.

Brian Will of Planning staff clarified that this application is to allow the use of this beer garden primarily as a smoking area, but also for patrons consuming alcohol. This area could be used just for smokers without going through the special permit process. This special permit is required for the consumption of alcohol in the beer garden.

Proponents

1. **Craig Wittstruck**, 1630 K Street, testified on behalf of the applicant, **Risky's, Inc.** He submitted a petition from 180 patrons of Risky's who are requesting that the Planning Commission consider approving this special permit. Exhibit G submitted is the certificate of the owners of the property along the west side of the premises in support. This application is basically a response and reaction to the smoking ban. This is a situation where there will be no sales going on in the area and no employees in the area. It will be people who want to smoke outside of the building. There will be smokers milling around the back side of the wall of the building if they do not have this additional space. The fence and the roof will shield from view the people in the beer garden/smoking area. He believes the noise will occur regardless of this special permit. The idea is to provide some shielding not only for the patrons but also for the surrounding community. There will be no employees in the area; there will be no service in the area. There will simply be tables in a shielded area for people who want to smoke. Wittstruck acknowledged that the premises are within the 150' requirement; however, the ownership is multi-family to the west and the ownership is 100% in favor of this special permit.

Carlson assumes that the ownership does not let patrons take drinks out the front door. So why can't they just construct a smoking area and simply ask the patrons not to take the alcohol out into the beer garden? Wittstruck suggested that Risky's doesn't have to do anything, and the smokers will be in the alley. In this case, they want to take responsibility for that. Risky's is willing to take the responsibility and they do not know whether it will be effective or not at this time. The owner believes this is a better alternative. It might not be cost effective to make it be a smoking area only.

The roof is a corrugated metal roof that matches the exterior of the building. This was done because of the multiple housing units to the west so that they would not be able to see down into the beer garden. It will shield light, vision and noise to some extent.

Marvin inquired whether this will be an all-season environment. Wittstruck stated that it would, but there will be no heating or air conditioning. It is not something that will be promoted. There will only be lighting and screening.

There was no testimony in opposition.

**ACTION BY PLANNING COMMISSION:**

January 5, 2005

Carlson moved to deny, seconded by Marvin.

Carlson believes the issue is smoking and he believes that can be addressed by providing a smoking area outdoors and not allow the drinks to be taken to the smoking area. The nuisance activity should be kept inside the establishment.

Bills-Strand commented that she would like to see businesses promote a smoking area with some screening, ash trays and maybe some benches. She will be more concerned about the 150' spacing requirement.

Taylor's concern is the proximity to the neighbors.

Motion to deny carried 6-0: Marvin, Krieser, Sunderman, Taylor, Carlson and Bills-Strand voting 'yes'; Carroll, Larson and Pearson absent. This is final action, unless appealed to the City Council within 14 days.

There being no further business, the meeting was adjourned at 2:05 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on January 19, 2005.